

In the Matter of Remedial Action by:)
)
) AGREED ORDER
Briggs Nursery, Inc. and Gary E. Briggs)
4407 Henderson Blvd. SE) No. 1315
Olympia, WA 98501-4469)

July 15, 2004

latitude 47°0'21.5"N, longitude 122°52'50.8"W.

(Exhibit A) Gary Briggs is the majority stockholder of Briggs Nursery, Inc., which is in the process of relocating its operations to a larger location in Porter, Washington.

2. Gary E. Briggs is the owner of the land on which the Nursery operates and leases the land to the Nursery. This land is currently on a schedule for development as the Briggs Urban Village and this Remedial Investigation/Risk Assessment/Feasibility Study is to be conducted in accordance with the master plan approval by the City.
3. The Nursery property borders Ward Lake on the east and includes 6 surface depressions known as "kettles" (North Kettle, Northwest Kettle, Northeast Kettle, Southeast Kettle, South Kettle and Central Kettle) which collect and hold varying amounts of stormwater from unimproved areas, nursery operations, Yelm Highway, South Street, Pifer Street, and Henderson Boulevard due to the natural topography and existing improvements to the area. The Nursery also includes unimproved areas, growing operations, greenhouses, a

warehouse, shop, chemical storage trailers, office building and laboratory. (See Exhibit B)

4. The "Site" is defined by regulation as anywhere hazardous substances have come to be located (WAC 173-340-200) and includes the property described in Paragraph 1 as Briggs Nursery, Inc., excluding the 5-acres of property known as the Briggs Nursery Debris Field, located on the southeast side of the Central Kettle. (For Legal Descriptions see Exhibit C) The cleanup of Briggs Nursery Debris Field was conducted separately under Agreed Order No. DE 02TCPSR-4593. All requirements of Agreed Order No. DETCPSR-4593 have been completed and the Briggs Nursery Debris Field has been delisted from the Hazardous Sites List (HSL) and is thereby not included as part of the Site.

5. In 1996 Landau Associates, Inc. performed a limited environmental investigation consisting of the analyses of one sediment sample from four different kettles, the Southwest-Central-Northwest- and one unidentified Kettle(s). In addition, a total of four soil samples were collected from two locations near the future

Briggs Urban Village Park. The analytical results of this exercise resulted in detections of dichlorodiphenyldichloroethene (DDE), dichlorodiphenyltrichloroethane (DDT), metals such as Thallium, Arsenic and Chromium and Polychlorinated Dibenzo Dioxins/Furans (PDD/F), although the detections are stated to be below current regulatory standards.

6. In 1998, a Limited Phase I Environmental Site Assessment was performed on Briggs' property by Phillips Services Corporation (PSC). The result of this assessment includes the preliminary identification of potentially contaminated areas including two underground storage tanks, chemical mixing areas and several septic systems associated with the various structures. Several temporary trailer structures contained chemicals and according to staff interviews conducted for the purpose of this assessment, chemical mixing operations were conducted at these and other permanent structures throughout the facility. According to the report, there was evidence of chemical spillage at all of these areas. These operations have several sinks which are plumbed so

that waste water exits the structure and becomes part of the surface water runoff. Most of the chemical mixing areas contained little or no containment capacity. Solid pellets of chemical fertilizers were visible at and around these mixing areas and evidence of these chemicals were observed in runoff streams enroute to the previously described Kettles. Several locations at the Site contained wood, plastic material, metal or debris. Several containers were discovered at these and other locations, some containers were full or partially full of unknown substances and others were empty. According to employee interviews, the Nursery does not maintain a stormwater pollution prevention plan.

7. L.C. Lee and Associates (LCLA) conducted additional contaminant sampling in 2000. There is a deep water well on site used for irrigation that was tested for Arsenic, Beryllium, Chromium and Thallium, all of which were undetected. Two samples were analyzed for metals, pesticides, herbicides from one location near the Fertilizer Shed/Fertilizer Injection Area. The samples contained detectable concentrations of DDT,

Arsenic and Chromium, however, all concentrations are stated to be below current regulatory limits. Two soil samples were collected from one location east of the Central Kettle, analyses included metals, pesticides/Polychlorinated Bi-phenyls (PCB), herbicides and dioxins/furans. Detections are stated to be below regulatory limits and included Chromium, Arsenic and PDD/Fs. Two samples were collected from one location east of the South Kettle, as well as east of the Northwest Kettle and analyzed only for metals. Arsenic and Chromium detections were similar to other locations and are stated to be below their respective regulatory limits. One sediment and one water sample was collected from the Northeast Kettle and were analyzed for PCBs and metals, and PCBs, respectively. The only detection was Chromium in the sediments and the concentration is stated to be less than regulatory limits. One sediment and one water sample was collected from the Southeast Kettle and analyzed for metals, pesticides/PCBs, herbicides and dioxins/furans. Compounds detected in the sediment sample include dichlorodiphenyldichloroethane (DDD), DDE, PCB and

several dioxin/furan compounds. Water detections include dichlorophenoxy acetic acid (2,4-D) and dioxin/furan compounds.

8. On January 18, 2002, Thurston County Health Department performed an Initial Investigation on behalf of the Department and concluded that based on the nature of the business and various analytical results, further characterization work is necessary. Some areas of concern identified are surface water and sediments in Kettle(s), underground storage tanks, and chemical storage/mixing areas, as well as other operational areas of the Site. As noted by Phillips Services Corporation in 1998, surface water and waste water from some plumbing fixtures flow to the Kettles. In 2003, Ecology documented road runoff, site stormwater and sediment flowing from the Site into Ward Lake via overflow pipes from the Northeast Kettle.
9. In June of 2004, the Department assessed a hazard ranking for the Nursery using the Washington Ranking Method (WARM), as required by MTCA. Ecology calculated a hazard ranking of 2, (with 1

being the highest and 5 being the lowest) for the property.

III.

Ecology Determinations

1. Briggs Nursery, Inc. and Gary E. Briggs are an "owner or operator" as defined at RCW 70.105D.020(11) of a "facility" as defined in RCW 70.105D.020(4).

2. The Site is known as Briggs Nursery, Inc., located at 4407 Henderson Blvd. SE, Olympia, WA 98501, and includes any area where hazardous substances from nursery operations have come to be located (WAC 173-340-200). 3. The substances found at the facility including metals, pesticides, herbicide(s), PCBs and dioxin/furan compounds are "hazardous substances" as defined at RCW 70.105D.020(7).

4. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there is a threatened release of hazardous substances from the facility, as defined in RCW 70.105D.020(19).

5. By a letter dated June 22, 2004, Briggs voluntarily waived its rights to notice and comment and accepted Ecology's determination that Briggs is a "potentially liable person" under RCW 70.105D.040.

6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.

7. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Briggs take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

Although Briggs has stated that characterization work performed to date does not indicate significant contamination, chemical detections indicate a threatened release of hazardous substances at the Site and further investigation and characterization is warranted. Additionally, several areas of concern lie under existing

structures and characterization will not be possible prior to demolition activities.

The Remedial Investigation/Risk Assessment/Feasibility Study requirements outlined in Exhibit D build upon the previous independently conducted investigations performed by Briggs which are described in Section II of this Agreed Order. Exhibit D is incorporated here by reference and Exhibit D is an integral and enforceable part of this Order.

Briggs Nursery Inc. is presently in the process of relocating. As part of the relocation, the company is removing greenhouses and support facilities. The relocation and removal of surface structures and related field irrigation facilities may continue. Briggs will provide 48 hours notice to Ecology prior to any demolition or removal activities, and all workers involved in these activities will be provided a copy of this Agreed Order. No underground structures, including underground fuel tanks and fuel lines, shall be removed except under the terms of this Agreed Order.

V.

Terms and Conditions of Order

1. Definitions. Unless otherwise specified, the definitions set forth in ch. 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notices. RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

3. Remedial Action Costs. Briggs shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Briggs shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved

staff members on the project. A general description of work

performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators. The project coordinator for Ecology is:

Lisa Pearson
Department of Ecology
Southwest Regional Office
Toxics Cleanup Program
PO Box 47775
Olympia, WA 98501

The project coordinator for Briggs is:

Name Ms. Kathy Brunson

Address

Briggs Nursery, Inc.

P.O. Box 658

Elma, WA 98541

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Briggs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or

Briggs change project coordinator(s), written notification

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shall be provided to Ecology or Briggs at least ten (10) calendar days prior to the change.

5. Performance. All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. Briggs shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site. Briggs shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, Briggs shall not perform any remedial actions at the Nursery outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

6. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes

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of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Briggs. By signing this Agreed Order, Briggs agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by Briggs during an inspection unless doing so interferes with Ecology's sampling. Briggs shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

7. Public Participation. Ecology shall maintain the responsibility for public participation at the site. Briggs shall help coordinate and implement public participation for the site.

8. Retention of Records. Briggs shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of Briggs Agreed Order

not take additional enforcement actions against Briggs to require those remedial actions required by this Agreed Order, provided Briggs complies with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from Briggs Nursery, Inc.

In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Briggs to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Briggs without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest Briggs may have in the site or any portions thereof, Briggs shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, Briggs shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws. All actions carried out by Briggs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in Exhibit E and are binding and enforceable requirements of the Order.

Briggs has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event Briggs determines that additional permits or approvals addressed in RCW

70.105D.090(1) would otherwise be required for the remedial

action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Briggs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Briggs shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Briggs and on how Briggs must meet those requirements. Ecology shall inform Briggs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Briggs shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW

that Nursery operations will continue through 2006, at which time final testing and action will occur.

Development is anticipated as Areas are determined to be in compliance with MTCA.

VII.

Enforcement

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:
 - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
 - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
 - C. In the event Briggs refuses, without sufficient cause, to comply with any term of this Order, Briggs will be liable for:
 - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
 - (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.


Effective date of this Order: July 30, 2004

Briggs Nursery, Inc.

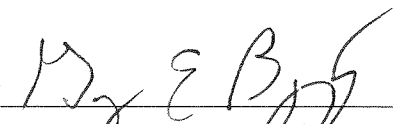
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